

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Bernardo Gutierrez	Team: Team # 5	CCRB Case #: 201212959	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 09/30/2012 12:45 AM	Location of Incident: § 87(2)(b) 34th Precinct stationhouse	Precinct: 34	18 Mo. SOL 3/30/2014	EO SOL 3/30/2014	
Date/Time CV Reported Mon, 10/01/2012 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/05/2012 2:48 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Genti Bektashaj	16162	937860	034 PCT
2. SGT Stephen Duffy	02728	901493	PBMN
3. SGT Matthew Bourbeau	01596	929762	034 PCT
4. POM Johnny Diaz	31661	915603	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Matthew Bourbeau	Abuse: Sgt. Matthew Bourbeau stopped § 87(2)(b)	§ 87(2)(b)
B.POM Genti Bektashaj	Force: PO Genti Bektashaj used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Genti Bektashaj	Force: PO Genti Bektashaj tightly handcuffed § 87(2)(b)	§ 87(2)(b)
D.SGT Matthew Bourbeau	Abuse: Sgt. Matthew Bourbeau authorized the frisk of § 87(2)(b)	§ 87(2)(b)
E.SGT Matthew Bourbeau	Abuse: Sgt. Matthew Bourbeau authorized the search of § 87(2)(b)	§ 87(2)(b)
F.POM Genti Bektashaj	Discourtesy: PO Genti Bektashaj spoke rudely to § 87(2)(b)	§ 87(2)(b)
G.POM Genti Bektashaj	Off. Language: PO Genti Bektashaj made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)
H.SGT Stephen Duffy	Abuse: Sgt. Stephen Duffy did not process § 87(2)(b)'s complaint regarding an officer.	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On October 1, 2012, § 87(2)(b) filed this complaint via telephone with IAB, generating log number 12-52300 (encl. 2A-2B). On October 5, 2012, the complaint was forwarded to the CCRB (encl. 2C-2D). On September 30, 2012, at approximately 12:45 a.m., § 87(2)(b) interacted with officers in front of § 87(2)(b). The following allegations resulted:

Allegation A-Abuse of Authority: Sgt. Matthew Bourbeau stopped § 87(2)(b) § 87(2)(g)

§ 87(2)(b)
§ 87(2)(b)

Allegation B- Force: PO Genti Bektashaj used physical force against § 87(2)(b)

Allegation C- Force: PO Genti Bektashaj tightly handcuffed § 87(2)(b) § 87(2)(g)

§ 87(2)(b)
§ 87(2)(b)

Allegation D- Abuse of Authority: Sgt. Matthew Bourbeau authorized the frisk of § 87(2)(b)

§ 87(2)(b)

Allegation E- Abuse of Authority: Sgt. Matthew Bourbeau authorized the search of § 87(2)(b)

§ 87(2)(g)
§ 87(2)(g)

Allegation F- Abuse of Authority: PO Genti Bektashaj spoke rudely to § 87(2)(b)

Allegation G- Offensive Language: PO Genti Bektashaj made remarks to § 87(2)(b) based upon race. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)

Allegation H- Abuse of Authority: Sgt. Stephen Duffy did not process § 87(2)(b) s complaint regarding an officer.

§ 87(2)(g)
§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(2)(b)
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§ 87(2)(b)

Results of Investigation

Civilian Statements

COMPLAINANT/VICTIM: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) old at the time of the incident, is a Hispanic man who is 5'8" tall, weighs 180 pounds and has black hair and brown eyes. § 87(2)(b)

Statements to Medical Personnel

§ 87(2)(b) attended § 87(2)(b) on § 87(2)(b). § 87(2)(b) stated that at approximately 1 a.m., he was grabbed by a police officer who pushed him to the ground, punched him in the left side of his face and ribs, kicked him in the back, applied handcuffs to his left forearm and then twisted the handcuffs in a manner to cause him pain (encl. 2E).

IAB Testimony

On October 1, 2012, § 87(2)(b) provided a telephone statement to IAB (encl. 2A-2B). His statement to IAB was consistent with those he provided to the CCRB.

CCRB Testimony

§ 87(2)(b) provided a telephone statement on October 15, 2012 (encl. 2F-2G). He provided an in-person, sworn statement on October 22, 2012 (encl. 2H-2L). He provided another telephone statement on January 25, 2013 (encl. 2M). § 87(2)(b)'s statements were taken in his primary language, Spanish. § 87(2)(b) has limited proficiency in English. § 87(2)(g)

On September 30, 2012, at approximately 12:45 a.m., § 87(2)(b) was working as § 87(2)(b) at a restaurant called § 87(2)(b) § 87(2)(b) in Manhattan. § 87(2)(b) exited the restaurant briefly to speak to one of the restaurant's owners, § 87(2)(b)

A few moments after starting to speak to § 87(2)(b) an officer held him by both of his hands and told him to place his hands on top of a car. The investigation identified this officer as PO Genti Bektashaj of the 34th Precinct. PO Bektashaj was accompanied by two other officers, identified as Sgt. Matthew Bourbeau and PO Johnny Diaz, of the 34th Precinct.

§ 87(2)(b) had not noticed the officers prior to being grabbed by PO Bektashaj. § 87(2)(b) believing that he was being robbed, tried to turn his body and pull his hands away. PO Bektashaj punched § 87(2)(b) in the face one time and pulled his left arm behind his back and lifted it towards his neck. In his first telephone statement, § 87(2)(b) stated that he was punched three times at this point in his face and neck.

PO Bektashaj took § 87(2)(b) to the floor and handcuffed him while punching him on his ribs and face. In his sworn statement, § 87(2)(b) said that he was unsure of the exact manner in which he was taken to the ground. In his first telephone statement, he stated that PO Bektashaj pushed him. § 87(2)(b) felt PO Bektashaj's body on top of him, which prevented him from moving.

PO Bektashaj placed handcuffs on § 87(2)(b) and identified himself as a police officer. § 87(2)(b) § 87(2)(b) overheard someone who identified himself as an officer tell § 87(2)(b) that he would ruin his phone or arrest him if he filmed the incident. PO Bektashaj called § 87(2)(b) a "son of a bitch" and an "asshole" and emptied the contents of his pants pockets onto the ground. PO Bektashaj began to kick him on his ribs, the backs of his thighs and his knees. § 87(2)(b) told

§ 87(2)(b) to inform a police officer that works at a local discotech, “§ 87(2)(b) of what was occurring.

PO Bektashaj stated that an anonymous caller had reported someone dressed like § 87(2)(b) being in possession of a weapon. As § 87(2)(b) lied on the floor, PO Bektashaj lifted his handcuffs by the chain and twisted them, causing § 87(2)(b) s arms to be twisted to a side. PO Bektashaj told him, “Shutup, asshole.” As he was twisting § 87(2)(b) s arms, PO Bektashaj said, “Fucking Hispanic.” He did not repeat this offensive language allegation in his first telephone statement.

PO Bektashaj escorted § 87(2)(b) to a black unmarked vehicle on the corner of 10th Avenue and West 211th Street. After several minutes, PO Bektashaj told him to exit the vehicle, took off his handcuffs, and told him that he had made him waste 35 minutes of his time, that he acted like a woman, and that his being Hispanic was the reason for his screaming so much. PO Bektashaj asked § 87(2)(b) for his name, address, and date of birth. PO Bektashaj called § 87(2)(b) a “fucking asshole.” § 87(2)(b) s eyes began to tear due to the stressful situation, and this obscured his view. He walked directly from the vehicle into the restaurant. He was later told by § 87(2)(b) that another employee of the restaurant named Eddie had seen the incident. § 87(2)(b) went to § 87(2)(b) approximately § 87(2)(b) after the incident.

On October 1, 2012, at approximately 4 p.m., § 87(2)(b) went to the 34th Precinct stationhouse. He spoke in English to a sergeant who was in the main lobby. He described this sergeant as a white man with dark colored and grey hair, approximately 5’11” tall, approximately 45 years old. He noticed the surname, “Duffy” and the shield number “2728” or “2726” on his uniform. The investigation identified this officer as Sgt. Steven Duffy of the 34th Precinct. He told Sgt. Duffy that an officer had assaulted him. Sgt. Duffy said that he would return soon and went into a back room. After 45 minutes, Sgt. Duffy came back out and sat behind the front desk. § 87(2)(b) asked him about the procedure for filing a complaint. Sgt. Duffy replied in a harsh tone that he was very busy and § 87(2)(b) left the stationhouse.

Photographs

On March 7, 2013, § 87(2)(b) emailed 17 photographs to the CCRB. The photographs were taken on either September 30, 2012, or October 1, 2012. They were labeled Photo 1 through Photo 17 (encl. 2N-2EE).

- Photo #1: Depicts an abrasion on § 87(2)(b) s right elbow.
- Photo #2: Depicts an abrasion to § 87(2)(b) s left index finger.
- Photo #3: Depicts scratches to § 87(2)(b) s left forearm.
- Photo #4: Depicts peeled skin on § 87(2)(b) s right wrist.
- Photo #5: Depicts abrasions on § 87(2)(b) s right shoulder.
- Photo #6: Depicts peeled skin on § 87(2)(b) s right wrist.
- Photo #7: Depicts an abrasion. § 87(2)(b) could not recall what body part is depicted.
- Photo #8: Depicts minor redness to § 87(2)(b) s upper back.
- Photo #9: Depicts redness to § 87(2)(b) s left cheek.
- Photo #10: Depicts an abrasion to one of § 87(2)(b) s armpits.
- Photo #11: Depicts an abrasion. § 87(2)(b) could not recall what body part is depicted.
- Photo #12: Depicts abrasions. § 87(2)(b) could not recall what body part is depicted.
- Photo #13: Depicts redness to § 87(2)(b) s buttocks.
- Photo #14: Depicts an abrasion to § 87(2)(b) s right wrist.
- Photo #15: Depicts a bandage on one of § 87(2)(b) s arms.
- Photo #16: Depicts Sgt. Stephen Duffy sitting behind the front desk of the 34th Precinct stationhouse.

Photo #17: Depicts an unidentified officer standing next to the front desk at the 34th Precinct stationhouse.

Witness: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at the time of the incident, is a Hispanic man.* § 87(2)(b) was a co-worker of § 87(2)(b)

CCRB Testimony

On October 25, 2012, § 87(2)(b) provided a telephone statement (encl. 3). On September 30, 2012, at approximately 12:45 a.m., § 87(2)(b) was inside § 87(2)(b). § 87(2)(b) is the owner of "§ 87(2)(b)," located at § 87(2)(b). § 87(2)(b) then one of the managers, approached § 87(2)(b)'s mobile home and called for him to exit. As § 87(2)(b) was exiting, three plainclothes officers, Sgt. Bourbeau, PO Bektashaj and PO Diaz approached § 87(2)(b) and told him that they had received information that he had a gun.

All three officers held on to § 87(2)(b). § 87(2)(b) yelled for the officers to let him go. They had not identified themselves at this point. The officers pushed § 87(2)(b) against the side of the mobile home. § 87(2)(b) told § 87(2)(b) to relax and that they were police officers. § 87(2)(b) attempted to get the officers off of him by moving his arms. PO Bektashaj punched § 87(2)(b) several times on the side of his face when he was up against the side of the mobile home (he could not approximate the number of times he was punched). The officers handcuffed § 87(2)(b) while he was against the side of the home.

All of the officers tripped § 87(2)(b) causing him to land face up on the ground. Upon falling to the ground, PO Bektashaj kicked him on his right shoulder several times and § 87(2)(b) attempted to sit down. PO Bektashaj pushed him back down with a hand and kicked him on this shoulder several more times. § 87(2)(b) did not notice whether § 87(2)(b) was face down on the ground at any point. § 87(2)(b) took out his cellular phone in order to film but was told by a uniformed female officer not to do so and he complied. The investigation did not identify this officer.

After approximately five minutes, § 87(2)(b) was lifted off of the ground by PO Bektashaj. As § 87(2)(b) was standing, PO Bektashaj began to make a movement with § 87(2)(b)'s handcuffs which caused him to scream loudly. § 87(2)(b) was unable to describe this movement. The owner of a nearby food truck and an employee of the restaurant, "§ 87(2)(b)" also witnessed the incident. The investigation identified this civilian as § 87(2)(b). § 87(2)(b) related that the food truck opens after approximately 8 p.m.

§ 87(2)(b) went to a local lounge, § 87(2)(b) in order to speak to two security personnel who are also police officers. Both individuals returned to the scene with § 87(2)(b). At this point, § 87(2)(b) was inside a vehicle. PO Bektashaj took § 87(2)(b) out of this vehicle and told him that he had struck him because he failed to follow orders. § 87(2)(b) was released and went straight into the restaurant.

Attempts to Contact Civilians

§ 87(2)(b) and § 87(2)(b) stated that a man who works at the restaurant named "§ 87(2)(b)" was a witness to the incident. This individual was called by telephone on October 25, 2013, and a voicemail message was left. This individual, who identified himself as § 87(2)(b), called back on the same date and stated that he could not recall any incident involving plainclothes officers interacting with or using force against any employee of the restaurant, including § 87(2)(b). Two letters were sent to § 87(2)(b) nightclub between March 12, 2013 and April 9, 2013. The owner of the food truck was not contacted as the business hours of the truck was after 8 p.m. No witnesses have come forward as of the date this report was written.

NYPD Statements:

Subject Officer: PO GENTI BEKTASHAJ

- *PO Bektashaj, § 87(2)(b) old at the time of the incident, is a white male who is 5'7" tall, weighs 180 pounds, is bald and has green eyes. PO Bektashaj speaks with an eastern European accent*
- *On September 30, 2012, PO Bektashaj was assigned to anti-crime duty in plainclothes from 10 p.m. to 6:35 a.m. He was partnered with Sgt. Bourbeau and PO Diaz. He was assigned to a black Chevrolet Impala, number 878.*

Memo Book

At 12:45 a.m., § 87(2)(b) was stopped on the corner of West 211th Street and 10th Avenue for suspicion of criminal possession of a weapon. § 87(2)(b) fit the description of a man with a gun from a previous job at Isham Street and Vermilyea Avenue who was described as a medium colored Hispanic, approximately 180 pounds, 5'7" tall, wearing a black shirt, close cut and blue jeans. § 87(2)(b) is a 5'7" tall male black Hispanic who weighs 180 pounds. A Stop, Question and Frisk report was made for suspicion of criminal possession of a weapon (encl. 4A-4D).

Handwritten Stop, Question, and Frisk Report § 87(2)(b)

A Stop, Question and Frisk report was prepared by PO Bektashaj for the stop of § 87(2)(b). The stop is noted as occurring at 12:45 a.m. at the intersection of 10th Avenue and West 211th Street. § 87(2)(b) fit the description of a suspect and displayed furtive movements. It is noted that force was used in handcuffing § 87(2)(b) in order to overcome resistance. A report from a victim/witness, his proximity to the scene of a suspected offense and "evasive, false or inconsistent responses to officers questions" are noted as factors in the stop. It is noted that he was frisked after refusing to comply with officer's directions, due to the outline of an object suspected to be a weapon and his reaching for a suspected weapon. This object turned out to be a cellular phone and keys in his pocket (encl. 4E-4H).

CCRB Testimony

PO Genti Bektashaj was interviewed at the CCRB on February 28, 2013, and July 3, 2013 (encl. 4I-4M). On September 30, 2012, at approximately 12:45 a.m., the officers received a radio call providing the description of a man with a gun on the corner of Isham Street and Vermilyea Avenue. PO Bektashaj did not have this job noted in his memo book and could not recall the time at which this call would have come over, but stated that it would have been close to the time of this incident. The individual was described in the call as a Hispanic male with a medium complexion, 5'7" tall, 180 pounds, wearing a black shirt and blue jeans.

The officers began to canvass the area to see if anyone fit this description. None of the officers had any interaction with the individual who had called 911. As the officers approached the corner of West 211th Street and 10th Avenue, they noticed § 87(2)(b). This intersection is one block away from Isham Street and Vermilyea Avenue. The officers observed § 87(2)(b) for several minutes as he entered and exited a mobile home on the corner several times.

PO Bektashaj was shown a copy of the Stop, Question and Frisk report he prepared regarding this incident. He cited § 87(2)(b) entering and exiting the motor home as being the reason that "furtive movements" were listed as a factor in the stop. When asked why his entering and exiting the home was seen as furtive or suspicious, PO Bektashaj stated that § 87(2)(b) could have been looking for someone. The officers discussed the situation and decided to stop § 87(2)(b).

because he fit the description of the man with a gun. They were also curious as to what he was doing in the motor home.

The vehicle's turret lights were turned on and the officers approached § 87(2)(b) at the same time. The officers identified themselves and told § 87(2)(b) not to move. PO Bektashaj did not make physical contact with § 87(2)(b) prior to telling him not to move. PO Bektashaj had his shield displayed around his neck with a chain at this time. § 87(2)(b) asked why he was stopped and PO Bektashaj explained that he fit the description of a man with a gun. § 87(2)(b) denied being in possession of a gun. PO Bektashaj could not recall why "evasive, false or inconsistent responses to officer's questions" were noted in the Stop, Question and Frisk report.

PO Bektashaj repeatedly told § 87(2)(b) to keep his hands up and he complied each time, but moved his hands back in the direction of his pants pockets. PO Bektashaj could not recall if he noticed a bulge on § 87(2)(b)'s person upon approaching him. The third time that § 87(2)(b) put his hands near his pockets, PO Bektashaj placed him in handcuffs. He initially stated that § 87(2)(b) was compliant and voluntarily placed his arms behind his back as PO Diaz assisted in handcuffing him. Later in the interview, he stated that he could not recall if § 87(2)(b) resisted being placed in handcuffs. PO Bektashaj could not recall why it was noted in the Stop, Question and Frisk report that force was used to overcome resistance.

PO Bektashaj frisked § 87(2)(b) in order to see if he had a gun. PO Bektashaj initially stated that he was unsure if he went inside any of § 87(2)(b)'s pockets. He later said that he felt a hard object inside one of § 87(2)(b)'s pockets and reached inside this pocket. He could not recall which pocket he reached into. He could not recall the size or shape of the object, but said that it could have been a weapon since it was hard. He pulled a cellular phone and keys out of this pocket. He did not go inside any other pockets. Once it was confirmed that § 87(2)(b) did not possess a weapon, his information was taken down and he was released.

PO Bektashaj did not punch or kick § 87(2)(b) at any point. § 87(2)(b) was handcuffed while in a standing position. PO Bektashaj could not recall if he took § 87(2)(b) to the ground. PO Bektashaj could not recall § 87(2)(b) being on the ground for any reason during the incident. He could not recall if he lifted § 87(2)(b) off the floor from the link of his handcuffs and could not recall if he purposefully twisted § 87(2)(b)'s handcuffs in a manner to cause him pain. No officer told anyone they would be arrested or have their phone broken if they filmed the incident.

No officer called § 87(2)(b) a "son of a bitch," "asshole" or "fucking asshole." No officer called § 87(2)(b) a "fucking Hispanic" and PO Bektashaj did not make any reference to § 87(2)(b)'s being Hispanic. PO Bektashaj could not recall if he made reference to § 87(2)(b) acting like a "woman" and did not hear his partners do so. He did not see any injuries on § 87(2)(b) after the stop and § 87(2)(b) did not complain of any.

Subject Officer: SGT. MATTHEW BOURBEAU

- *Sgt. Bourbeau, § 87(2)(b) old at the time of the incident, is a white man who is 6'1" tall, weighs approximately 180 pounds and has brown hair and blue eyes.*
- *On September 30, 2012, Sgt. Bourbeau was assigned to duty as 34th Precinct anti-crime supervisor in plainclothes from 10 p.m. on September 29, 2012, to 6:44 a.m. on September 30, 2012. He was partnered with PO Johnny Diaz and was assigned to vehicle 878, a black Chevrolet Impala.*

Memo Book

At 12:45 a.m., Sgt. Bourbeau stopped a male on the corner of West 211th Street and 10th Avenue. At 12:55 a.m., a Stop, Question and Frisk report was prepared in regards (encl. 5A-5C).

CCRB Testimony

Sgt. Bourbeau was interviewed at the CCRB on April 3, 2013 (encl. 5D-5F). On September 30, 2012, at approximately 12:45 a.m., Sgt. Bourbeau and his partners responded to a call of a dispute, somewhere along Vermilyea Avenue. Nothing in the transmission was mentioned regarding a firearm. Sgt. Bourbeau was shown SPRINT Report § 87(2)(b) which is in regard to a dispute in the vicinity of Vermilyea Avenue and Isham Street. He agreed that this likely would have been the job.

Upon arrival, Sgt. Bourbeau noticed approximately 15 people present. Sgt. Bourbeau learned that there had been a large fight that had ended by the time officers arrived. An ambulance had been called for an intoxicated female. A Hispanic woman in her early 20's told Sgt. Bourbeau that she had seen a man holding a gun and gave him a description of the man's pedigree and clothing. Sgt. Bourbeau could not recall the details of the description. The female had seen this man several minutes before speaking to Sgt. Bourbeau. Sgt. Bourbeau did not record this female's name and could not recall if he placed a call over the radio regarding the armed individual.

Sgt. Bourbeau and the officers reentered the vehicle and began to look for the individual. Approximately two minutes later, Sgt. Bourbeau and his partners noticed a male who fit the description, § 87(2)(b) on the corner of West 211th Street and 10th Avenue. § 87(2)(b) was going in and out of a mobile home on the corner of this intersection. § 87(2)(b) was observed for about 15 seconds prior to the officers approaching him. § 87(2)(b) was not doing anything else to raise Sgt. Bourbeau's suspicion aside from fitting the description provided by the female.

All three officers approached § 87(2)(b) at the same time. PO Bektashaj identified himself as a police officer and asked to see § 87(2)(b)'s hands at least twice while standing approximately five feet away. Sgt. Bourbeau had his badge displayed but could not recall if his partners had their badges out. § 87(2)(b) kept his hands by the sides of his pants pockets. Upon PO Bektashaj speaking to him, Sgt. Bourbeau became aware of a language barrier because § 87(2)(b) began to speak in Spanish. PO Diaz, who speaks Spanish, began to speak to § 87(2)(b).

No physical contact was made with § 87(2)(b) prior to his being called verbally. PO Bektashaj held both of § 87(2)(b)'s hands. Sgt. Bourbeau did not say why PO Bektashaj took this action. § 87(2)(b) pulled his arms away and flailed his arms. The resistance was overcome by PO Bektashaj pulling his arms behind his back and placing him in handcuffs. He was standing several feet from the motor home when he was handcuffed and did not make contact with it any point. Sgt. Bourbeau could not recall if he or PO Diaz assisted in placing § 87(2)(b)'s arms behind his back. PO Bektashaj frisked § 87(2)(b) on his waistband and his ankle area after he was handcuffed.

No other type of force was used on § 87(2)(b) at any other point during the encounter. No officer kicked or punched § 87(2)(b). Sgt. Bourbeau did not recall § 87(2)(b) being taken to the ground and he denied doing so. Sgt. Bourbeau denied any officer purposefully lifting § 87(2)(b) from the ground by the link of his handcuffs and the link being twisted. Sgt. Bourbeau did not hear any officer call § 87(2)(b) a "fucking Hispanic," "asshole," "fucking asshole," or "son of a bitch." He denied making these statements.

Sgt. Bourbeau did not recall seeing a telephone or keys being recovered from § 87(2)(b). No officer searched § 87(2)(b) at any point. Sgt. Bourbeau did not say, or hear any officer tell anyone that they would ruin their phone if they failed to cease filming the incident. § 87(2)(b) was escorted to the back of the police vehicle and was asked to sit in the back seat for his own comfort, as the officers obtained his information. After this was done, he was taken out of his handcuffs and released.

Sgt. Bourbeau was shown photograph number 1, depicting an abrasion to § 87(2)(b)'s right arm, photograph number 2, depicting a scrape to § 87(2)(b)'s left index finger, photograph number 3, showing a scrape on his left forearm, photograph number 4, depicting a cut on his left

wrist and photograph number 5, showing an abrasion on his right shoulder. Sgt. Bourbeau did not know how any of these injuries occurred.

Subject Officer: PO JOHNNY DIAZ

- PO Diaz, § 87(2)(b) old at the time of the incident, is a Hispanic man who is 6 feet tall, weighs 180 pounds, is bald and has brown eyes.
- On September 30, 2012, PO Diaz was assigned to 34th Precinct anti-crime duty in plainclothes from the hours of 10 p.m. on September 29, 2013, to 6:35 a.m. on September 30, 2013. He was partnered with PO Genti Bektashaj and Sgt. Matthew Bourbeau. He was assigned to an unmarked vehicle, a black Chevrolet Impala.

Memo Book

PO Diaz did not have any memo book entries regarding this incident (encl. 6A-6B).

CCRB Testimony

On April 10, 2013, PO Johnny Diaz was interviewed at the CCRB (encl. 6C-6E). On September 30, 2012, PO Diaz was driving the police vehicle. A woman flagged down the police vehicle near the intersection of Vermilyea Avenue and West 211th Street. The woman stated that she had been robbed at gunpoint no more than ten minutes before flagging down the officers. PO Diaz was shown SPRINT report § 87(2)(b). He reviewed the report but could not recall if it had been in any form related to the woman who had flagged the vehicle down. The female provided a description of the perpetrator. PO Diaz could not recall how she described the perpetrator aside from her stating that he was a male Hispanic. PO Diaz was unsure but believed that sector officers may have arrived to take a report from the woman.

Approximately ten minutes later, the officers drove down West 211th Street towards 10th Avenue. As PO Diaz approached the corner of West 211th Street and 10th Avenue, the officers saw § 87(2)(b) who fit the description provided by the woman. The officers briefly discussed the fact that § 87(2)(b) fit the description provided by the woman. § 87(2)(b) was exiting a motor home on the corner of West 211th Street and 10th Avenue.

PO Diaz said that the man had walked towards the street but walked back in the direction of the motor home upon seeing the police vehicle. PO Diaz was shown the copy of the Stop, Question and Frisk report prepared for § 87(2)(b) which listed furtive movements as a factor raising suspicion. PO Diaz could not recall any specific furtive movements. He could not recall any additional factors that would have raised his suspicion.

Sgt. Bourbeau and PO Bektashaj exited the vehicle and PO Diaz pulled the vehicle to the side of the road. The vehicle had not had its cherry lights on. PO Diaz did not see what, if anything, the other officers said to § 87(2)(b) as they approached him. PO Diaz could not recall if his partners had their shields displayed upon approaching § 87(2)(b). PO Diaz exited the vehicle and saw that PO Bektashaj was frisking § 87(2)(b) along his waistband area. PO Diaz could not recall if § 87(2)(b) had any bulges under his clothing. PO Diaz did not hear PO Bektashaj tell § 87(2)(b) anything prior to frisking him. PO Bektashaj asked § 87(2)(b) for identification after frisking him. PO Diaz could not recall if § 87(2)(b) provided his identification or if he only identified himself verbally. PO Diaz denied searching § 87(2)(b) and could not recall if any of the other officers searched him.

§ 87(2)(b) did not speak English and spoke to PO Diaz in Spanish. PO Diaz told § 87(2)(b) who was yelling, that they were police officers, to relax and to show his identification. His irate demeanor led PO Diaz to believe that he had been intoxicated. PO Diaz did not know why it was noted in § 87(2)(b)'s Stop, Question and Frisk report that he provided evasive, false or inconsistent responses to questions. § 87(2)(b) was placed in handcuffs. PO Diaz could not

recall who performed this action or if he would have done so. PO Diaz could not recall if § 87(2)(b) resisted being placed in handcuffs or if force was used to place him in handcuffs.

PO Diaz could not recall if any officer told anyone that they would break their camera if they did not stop filming. He denied doing so. The officers spoke to a local bouncer who also informed them that § 87(2)(b) works at a nearby restaurant. A co-worker of § 87(2)(b) told the officers that § 87(2)(b) had been drinking.

PO Diaz did not recall if any officer used force against § 87(2)(b) at any point during the incident. PO Diaz denied himself or any officer kicking or punching § 87(2)(b). PO Diaz could not recall if § 87(2)(b) was taken to the ground for any reason. PO Diaz denied any officer including himself lifting § 87(2)(b) off the ground by the handcuff link and twisting the chain. No officer used profanity against § 87(2)(b). PO Diaz did not hear an officer say, “Shut up asshole,” or call him a “fucking Hispanic,” an “asshole” or “fucking asshole,” or a “son of a bitch.” PO Diaz denied making any of these statements.

PO Diaz did not see any injuries on § 87(2)(b) by the end of the stop. § 87(2)(b) did not complain about any injuries aside from complaining of pain in his wrists due to the handcuffs. PO Diaz could not account for the injuries depicted in Photos 1-3 and 5. He stated that the abrasion to § 87(2)(b)'s right wrist in Photo 4 could have been caused by the handcuffs. PO Diaz could not recall if any part of § 87(2)(b)'s body made contact with any surface. PO Bektashaj prepared a Stop, Question and Frisk report and the officers resumed patrol.

NYPD Documents

SPRINT Index

The 34th Precinct SPRINT Index was requested from 11 p.m. on September 29, 2012, to 1 a.m. on September 30, 2012 (encl. 7C-7F). Two SPRINT reports, § 87(2)(b) and a duplicate, § 87(2)(b) were found to have taken place before the time of § 87(2)(b)'s stop at 12:45 a.m. and both occur approximately one block away from the incident location, near the intersection with Vermilyea Avenue and Isham Street.

SPRINT Reports § 87(2)(b) **and** § 87(2)(b)

At 12:34 a.m., an anonymous female called 911 to state that a large group of approximately 20 people were fighting in the vicinity of Vermilyea Avenue and Isham Street. The female had not seen any weapons. At 12:35 a.m., an anonymous male called to report a fight at the same location. It was unknown at this point if there were weapons present. Various 34th Precinct sectors, a 34th Precinct patrol sergeant, a 34th Precinct conditions team and a 34th Precinct lieutenant began arriving at the scene at 12:36 a.m. At 12:44 a.m., it is noted that EMS was needed at the location for an intoxicated female. Various units marked the job as “non-crime corrected” at 1 a.m. (encl. 7G-7I).

Complaint Report

A search for any complaint report in the vicinity of Vermilyea Avenue and West 211th Street for both September 29, 2012, and September 30, 2012, yielded negative results (encl. 13E).

Sgt. Duffy's Employment Status

On March 13, 2013, MAS personnel confirmed that Sgt. Duffy retired on March 12, 2013 (encl. 13D).

Medical Records

On § 87(2)(b), § 87(2)(b) attended § 87(2)(b). § 87(2)(b) was found to have abrasions over his tongue, posterior elbows, left distal forearm, right wrist area and back. A physical examination revealed swelling and tenderness over § 87(2)(b)'s lower rib area. Tenderness on his left mandible, the left side of the back of his head and the back of his neck were found. He was diagnosed with abrasions of multiple locations on his body and multiple contusions after an alleged assault. § 87(2)(b) declined any medication.

On § 87(2)(b), § 87(2)(b) returned to the hospital. He requested pain medication that he had previously declined. He was prescribed Percocet, Tylenol and 500 milligrams of Naprosyn (encl. 8).

Status of Civil Proceeding

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 26, 2013, more than three months after the filing deadline passed (encl. 9).

Civilian Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 1E).

Subject Officers CCRB History

- Sgt. Bourbeau has been a member of the service for ten years with no substantiated allegations having been made against him (encl. 1A).
- PO Bektashaj has been a member of the service for seven years with no substantiated allegations having been made against him (encl. 1B-1C).
- PO Diaz has been a member of the service for 17 years with no substantiated allegations having been made against him (encl. 1D).

Conclusion

Identification of Subject Officers

PO Bektashaj prepared a Stop, Question and Frisk report for § 87(2)(b). PO Bektashaj fit the description of the officer who § 87(2)(b) alleged used force, discourteous and offensive language and searched him. Although § 87(2)(b) did not allege being frisked, this allegation was pleaded since PO Bektashaj admitted doing so. § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegations Not Pleased

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A-Abuse of Authority: Sgt. Matthew Bourbeau stopped § 87(2)(b)

It is undisputed that Sgt. Bourbeau supervised PO Bektashaj and PO Diaz as they stopped § 87(2)(b). § 87(2)(b) stated that as he was standing outside of § 87(2)(b) he was approached by officers and ordered by PO Bektashaj to place his hands on top of a vehicle. § 87(2)(b) corroborated this account, stating that the officers, who had not identified themselves, told § 87(2)(b) that they had reason to believe that he was in possession of a gun. Sgt. Bourbeau, PO Bektashaj and PO Diaz stated that their interaction with him stemmed from his matching a description of a crime suspect. They differed on the details.

Sgt. Bourbeau stated that the officers initially received a call of a dispute at a location along Vermilyea Avenue, approximately one block from where the stop occurred. He denied that a firearm was mentioned in the call. PO Bektashaj provided an account in which the officers received a radio call that provided a description of a man with a gun on the corner of Isham Street and Vermilyea Avenue. PO Bektashaj stated that the suspect was described as a Hispanic male with a medium complexion, 5'7" tall, 180 pounds, wearing a black shirt and blue jeans.

The officers' accounts regarding the call were found to be unreliable. Sgt. Bourbeau and PO Bektashaj's testimonies varied drastically in regard to the presence of a weapon at the location and PO Diaz made no mention of the officers having received a radio call at the location. The only call that evening from Vermilyea Avenue and Isham Street, SPRINT Report § 87(2)(b) was in regard to a dispute. There was no mention of an individual with a firearm in the report and there were no other reports nearby regarding a man with a gun.

Sgt. Bourbeau stated that upon arrival at Vermilyea Avenue and Isham Street, a female whose information he did not record, told him that she had seen a man holding a gun. She provided a description of the man's pedigree and clothing. Sgt. Bourbeau could not recall any of the details of the description at the time of his CCRB interview. PO Bektashaj denied himself or his partners speaking to the individual who had called 911 to report the man with a gun. PO Diaz stated that a female flagged down the unmarked police vehicle near the intersection of Vermilyea Avenue and West 211th Street, one block away from Vermilyea Avenue's intersection with Isham Street. The female complained to officers that she had been robbed at gunpoint several minutes prior to their arrival. PO Diaz could not recall how the perpetrator was described aside from the female stating that he was a male Hispanic.

§ 87(2)(g)

All of the officers stated that upon first seeing § 87(2)(b) he was entering and exiting a mobile home near the intersection of West 211th Street and 10th Avenue. Sgt. Bourbeau stated that § 87(2)(b) was not doing anything else to raise his suspicion aside from fitting the description provided by the female at this time. PO Bektashaj stated that "furtive movements" were noted as a factor in the stop due to § 87(2)(b) entering and exiting the mobile home. He stated that § 87(2)(b) doing so indicated that he could have been searching for someone. PO Diaz could not recall any furtive movements made by § 87(2)(b) aside from his walking away from the motor home and walking back towards it upon seeing the unmarked police vehicle.

The right to stop an individual must arise from a reasonable suspicion that said individual has committed, is in the process of committing, or is preparing to commit a crime. People v. Debour, 40 N.Y.2d 210, (1976) (encl. 0S-0CC). Anonymous tips must be reliable in their assertions of illegality and in their tendency to identify a specific person. Florida v. J.L., 529 U.S. 266, (2000) (encl. 0A-0G).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B- Force: PO Genti Bektashaj used physical force against § 87(2)(b)

Allegation C- Force: PO Genti Bektashaj tightly handcuffed § 87(2)(b)

§ 87(2)(b) admitted to attempting to turn his body and pull his arms away upon PO Bektashaj making contact with him. PO Bektashaj allegedly punched § 87(2)(b) in the face and took him to the ground. As he was being handcuffed, PO Bektashaj allegedly punched him multiple times in the face and ribs. PO Bektashaj allegedly began to kick § 87(2)(b) on his ribs, the backs of his thighs and his knees. PO Bektashaj then allegedly lifted § 87(2)(b) from the link of his handcuffs and twisted them, causing § 87(2)(b) pain.

§ 87(2)(b) stated that § 87(2)(b) was approached by plainclothes individuals who had not identified themselves as officers. He stated that these individuals pushed § 87(2)(b) against the side of the mobile home and that § 87(2)(b) attempted to get them off of him by moving his arms. § 87(2)(b) stated that PO Bektashaj punched § 87(2)(b) on the side of his face several times and that the officers subsequently tripped § 87(2)(b) causing him to fall face up. PO Bektashaj allegedly kicked § 87(2)(b) several times on his right shoulder. § 87(2)(b) corroborated § 87(2)(b)'s account of PO Bektashaj moving his handcuffs in a way to cause him pain and scream.

§ 87(2)(b) went to the hospital the same day as the incident and was found to have multiple injuries. He was diagnosed with multiple abrasions, contusions and as being the victim of an assault. He also took photographs depicting various abrasions. The Stop, Question and Frisk report generated for the incident shows that force was used to overcome resistance.

PO Bektashaj denied punching or kicking § 87(2)(b) and stated that he could not recall if he took § 87(2)(b) to the floor during the incident. He stated that he could not recall if he would have lifted § 87(2)(b) from the floor by his handcuffs nor if he purposely twisted the handcuffs in a manner to cause him pain. He stated that he could not recall if § 87(2)(b) resisted being placed in handcuffs and could not recall why the Stop, Question and Frisk report lists force as being used to overcome resistance.

Sgt. Bourbeau stated that the only force used by PO Bektashaj in handcuffing § 87(2)(b) was in placing his arms behind his back. He denied any officer punching or kicking § 87(2)(b) and denied his handcuff links being twisted. Sgt. Bourbeau could not recall if § 87(2)(b) was taken to the ground during the incident.

PO Diaz could not recall if § 87(2)(b) resisted being placed in handcuffs. PO Diaz denied any officer kicking or punching § 87(2)(b) and denied any officer twisting the links of his handcuffs. PO Diaz could not however, recall if § 87(2)(b) was taken to the ground.

An individual physically preventing an officer from performing an illegal search of his person does not provide reasonable suspicion that the individual is engaging in a crime. People v. Gerard, 2012 NY Slip Op 2957 (2012) (encl. 0DD-0EE). According to Patrol Guide Section 203-11, officers must use the minimum force necessary at the scene of a police incident (encl. 0II-0JJ).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D- Abuse of Authority: Sgt. Matthew Bourbeau authorized the frisk of § 87(2)(b)

Allegation E- Abuse of Authority: Sgt. Matthew Bourbeau authorized the search of § 87(2)(b)

§ 87(2)(b) claimed that after he was taken to the ground, his belongings were emptied from his pockets. § 87(2)(b) did not mention § 87(2)(b) being frisked or searched.

PO Bektashaj admitted to frisking and searching § 87(2)(b). He stated that he handcuffed § 87(2)(b) after he ignored repeated requests to keep his hands up and away from his pockets. PO Bektashaj stated that he could not recall if he noticed a bulge on § 87(2)(b)'s person as he approached him. PO Bektashaj stated that he frisked § 87(2)(b) in order to see if he had a gun. PO Bektashaj initially stated that he was unsure if he went inside any of § 87(2)(b)'s pockets. He later said that he felt a hard object inside one of § 87(2)(b)'s pockets and reached inside the pocket. He believed that the object could have been a weapon due to it being hard, but could not recall the size or shape of the object. The search revealed a cellular phone and keys.

Sgt. Bourbeau stated that PO Bektashaj frisked § 87(2)(b) on his waistband and ankle area after he was handcuffed. Sgt. Bourbeau denied ordering PO Bektashaj to do so. He denied any officer searched § 87(2)(b) or recovered a telephone or keys from his person.

PO Diaz stated that he observed PO Bektashaj frisking § 87(2)(b) along his waistband area shortly after the officers approached him. He could not recall if § 87(2)(b) had any visible bulges under his clothing. PO Diaz denied searching § 87(2)(b) and could not recall if any other officer searched him.

The Stop, Question and Frisk report shows that § 87(2)(b) was frisked after refusing to comply with officer's directions and due to the outline of an object suspected to be a weapon. This object was found to be a cellular phone and keys in his pocket.

In order to frisk someone, an officer must have reasonable suspicion that the person is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (1999) (encl. 0H-0R). An individual physically blocking an officer from performing an illegal search of their person does not provide reasonable suspicion that the individual is engaging in a crime. People v. Gerard, 2012 NY Slip Op 2957

(2012) (encl. 0DD-0EE). As noted in Debour, an officer must have probable cause to effect an arrest prior to a search being conducted. The exception to this rule is if during a frisk, an officer feels an object which could be mistaken for a weapon. People v. Hill, 262 A.D.2d 870 (1991-4th Dept) (encl. 0FF-0HH).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F- Abuse of Authority: PO Genti Bektashaj spoke rudely to § 87(2)(b)

Allegation G- Offensive Language: PO Genti Bektashaj made remarks to § 87(2)(b)
based upon race.

§ 87(2)(b) alleged that throughout the course of the incident, PO Bektashaj used discourteous and offensive language against him by calling him a “son of a bitch,” “asshole,” “fucking asshole” and “fucking Hispanic.” § 87(2)(b) did not allege any discourteous or offensive language on behalf of § 87(2)(b) Sgt. Bourbeau and PO Diaz denied hearing an officer make these statements. § 87(2)(g)

Allegation H- Abuse of Authority: Sgt. Stephen Duffy did not process § 87(2)(b) **s complaint regarding an officer.**

§ 87(2)(b) alleged that he spoke to Sgt. Duffy inside of the 34th Precinct stationhouse and that he ignored § 87(2)(b)'s request to file a complaint in regard to the previous evening's incident. On March 13, 2013, MAS personnel confirmed that Sgt. Duffy retired on March 12, 2013 (encl. 13D). § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: 5

Investigator: _____ Bernardo Gutierrez 10/10/13
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date